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8 **UNITED STATES DISTRICT COURT**
9
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 JAN PETERS,

13 Plaintiff,

14
15 vs.

16 BETTY T. YEE, IN HER OFFICIAL
17 CAPACITY AS CHIEF FISCAL
18 OFFICER, STATE CONTROLLER
19 OF THE STATE OF CALIFORNIA,
20 AND AS TRUSTEE OF THE
UNCLAIMED PROPERTY FUND,

21 Defendant.
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Case No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Jan Peters (hereafter, “Plaintiff” or “Mr. Peters”) files this complaint
2 for declaratory and injunctive relief against defendant Betty T. Yee, in her official
3 capacity as Chief Fiscal Officer, Controller for the State of California and as Trustee
4 of the Unclaimed Property Fund (hereafter, “Controller” or “Defendant”) and alleges
5 as follows:
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7 **JURISDICTION AND VENUE**

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10 1. This lawsuit is brought pursuant to the following provisions of the
11 United States Constitution: (a) Fourteenth Amendment, Section 1 (Due Process),
12 and (b) the Fifth Amendment, Article I, Section 10 (Takings). This action is also
13 brought pursuant to 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28
14 U.S.C. §§ 1331 and 1343.
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17 2. A substantial part of the events or omissions giving rise to the claims
18 here at issue occurred in this District. A substantial portion, if not all, of the property
19 seized by the Administrator is situated herein. Therefore, venue is proper pursuant
20 to 28 U.S.C. § 1391(b)(2).
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22 **PARTIES**

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24 3. Plaintiff Jan Peters (hereafter, “Plaintiff” or “Mr. Peters”) is an
25 individual who resides in a suburb of the City of Munich, State of Bavaria, Germany.
26 He is a citizen of Germany and has never been a citizen of the United States of
27 America or resided in its State of California. During his employment at Amazon.de,
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1 Plaintiff received shares of Amazon stock as a part of his annual salary, which
2 Amazon stored for all employees at that time with Charles Schwab. Amazon is a
3 Washington corporation domiciled in Seattle, Washington.
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5 4. Defendant Betty T. Yee, or the Controller, was elected Chief Fiscal
6 Officer, Controller for the State of California in 2014. She was reelected in 2018
7 and currently holds that position. In her elected capacity, she oversees the
8 administration of California's Unclaimed Property Law, California Code of Civil
9 Procedure §§ 1300, *et seq.* (hereafter, "UPL" or "Unclaimed Property Law") and
10 acts as the private Trustee or Custodian of the Unclaimed Property Fund. Defendant
11 is named in her official capacity as Controller of the State of California and as
12 Trustee of the private accounts held in custody in the Unclaimed Property Fund
13 (hereafter, "Controller" or "Defendant").
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18 **GENERAL ALLEGATIONS**

19 **A. Introduction**

20 5. Plaintiff is an individual who resides in a suburb of the City of Munich,
21 State of Bavaria, Germany. He is a citizen of Germany and has never been a citizen
22 of the United States of America or resided in its State of California. During his
23 employment at Amazon.de he received shares of stock as a part of his compensation
24 package, retirement, and other benefits, which Amazon maintained for all employees
25 at that time with Charles Schwab. The Controller has no jurisdiction over German
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1 citizens who reside in Germany and their private stockholdings, which are personal
2 property and belong to a citizen who resides in another country. Germany and many
3 foreign countries, have their own escheat laws. Further, Amazon is a Washington
4 corporation domiciled in Seattle, Washington. Mr. Peters had no intention of
5 “abandoning” his personal property to a province in a foreign country like
6 California, which is thousands of miles from where he lives. Mr. Peter’s 1,029 shares
7 of Amazon stock were seized and sold by the Controller under color of the California
8 Unclaimed Property Law, Code of Civil Procedure sections 1300, *et seq* (hereafter,
9 “UPL” or “Unclaimed Property Law”) for roughly \$1,603,807.46 by the Controller
10 without prior constitutional and statutory notification to Mr. Peters of the seizure and
11 sale before or after the act occurred.

12 **B. Background Facts**

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14 6. Mr. Peters is an individual who resides in a suburb of the City of
15 Munich, State of Bavaria, Germany. He is a citizen of Germany and has never been
16 a citizen of the United States nor resided in the State of California. The Controller
17 has no jurisdiction over German citizens who reside in Germany, their private stock
18 holdings, which are personal property and belong to these citizens who resides in
19 another country. The Controller’s own records revealed Plaintiff as a foreign citizen
20 who resides in Germany.

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1 7. Germany and many foreign countries, have their own unclaimed
2 property or escheatment laws. Further, the Amazon corporation is incorporated in
3 the State of Washington and domiciled in Seattle, Washington. Mr. Peters had no
4 intention of “abandoning” his personal property to a province like California located
5 in another country, thousands of miles from where he lives. Yet, Mr. Peters’ 1,029
6 shares of Amazon stock valued at current market would be worth roughly
7 \$3,359,849.64, were the shares not seized and sold without notice for roughly
8 \$1,603,807.46 by the Controller. Although the Controller is under statutory and
9 constitutional obligation, notice in any manner was provided to Plaintiff whatsoever
10 whether under the laws of the State of California, the United States of America, or
11 Germany prior to the seizure and sale occurred.

12 8. This action challenges the constitutionality of the California’s
13 Unclaimed Property Law, Code of Civil Procedure sections 1300, *et seq.* (hereafter,
14 “UPL” or “Unclaimed Property Law”), which requires that financial organizations,
15 corporations, and other business entities holding so-called “abandoned” property
16 transfer it to the California State Controller’s Office or face heavy monetary fines
17 and penalties. Such property includes dormant savings accounts, uncashed payroll
18 checks, unredeemed customer or vendor credits, unused gift cards or gift certificates,
19 and inactive stock and bond accounts. Aside from having no jurisdiction, California
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1 does not and cannot provide constitutional and statutory notice to foreign citizens
 2 like Plaintiff.¹
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4 9. Currently, the Controller holds over \$10.2 billion in “unclaimed”
 5 property.² This property is owned by such purportedly “lost and unknown”
 6 entertainers, politicians athletes, and public personalities like Kobe Bryant (Property
 7 ID Nos. 962594045 and 017241610), the Speaker of the United States House of
 8 Representatives Nancy Pelosi (Property ID Nos. 015048011, 012390561, and
 9 968473966), the former Governor of the State of California, Arnold Schwarzenegger
 10 (Property ID No. 964627703), Vladimir Putin (Property ID No. 986208586),
 11 Presidents George W. Bush (Property ID No. 956318038) and Barack Obama
 12 (Property ID No. 969500727), and one member of the California Supreme Court,
 13 among many other “lost and unknown” people like Plaintiff.
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18 10. In fact, 48,000,000³ of the State of California’s 39,512,223⁴ residents
 19 are listed as “lost and unknown” to the Controller, though virtually every one of
 20 these citizens is well known to the State of California for purposes of paying state
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24 ¹ *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (“*Mullane*”); *Jones v.*
 25 *Flowers*, 547 U.S. 220 (2006) (“*Jones*”); *Taylor v. Westly*, 402 F.3d 924 (9th Cir.
 26 2005), reh’g and reh’g en banc den. (May 13, 2005) (“*Taylor I*”); *Taylor v. Westly*,
 27 488 F.3d 1197 (9th Cir. 2007) (“*Taylor II*”); *Taylor v. Westly*, 525 F.3d 1288 (9th
 Cir. May 12, 2008) (“*Taylor III*”).

28 ² https://sco.ca.gov/eo_pressrel_21369.html.

³ https://sco.ca.gov/eo_pressrel_19941.html.

⁴ <https://www.census.gov/quickfacts/CA>.

1 taxes, motor vehicle registration, property taxes, voting, census registration, or even
 2 to pay a \$15.00 parking ticket and the Controller is the Chief Fiscal Officer with
 3 access to all state records and databases. The Controller cannot locate any of these
 4 California citizens when it is time to notify them prior to the seizure of their private
 5 property under a statutory scheme that requires the owners must be “lost and
 6 unknown” to the Controller as a precondition for application of the statutory scheme
 7 and the seizure and sale of the private property. (*See* Cal. Code Civ. Proc. § 1300
 8 [entitled, “Definitions”].⁵)

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 13 ⁵ Section 1300 states in relevant part as follows:

14 “For the purposes of this title, the following definitions shall apply:

15 (a) “Property,” unless specifically qualified, includes all classes of property, real,
 16 personal and mixed.

17 (b) “Unclaimed property,” unless specifically qualified, means all property (1)
 18 which is unclaimed, abandoned, escheated, permanently escheated, or distributed to
 19 the state, or (2) which, under any provision of law, will become unclaimed,
 20 abandoned, escheated, permanently escheated, or distributed to the state, or (3) to
 21 the possession of which the state is or will become entitled, if not claimed by the
 22 person or persons entitled thereto within the time allowed by law, whether or not
 23 there has been a judicial determination that such property is unclaimed, abandoned,
 24 escheated, permanently escheated, or distributed to the state.

25 (c) “Escheat,” unless specifically qualified, means the vesting in the state of title to
 26 property the whereabouts of whose owner is unknown or whose owner is unknown
 27 or which a known owner has refused to accept, whether by judicial determination or
 28 by operation of law, subject to the right of claimants to appear and claim the
 escheated property or any portion thereof. When used in reference to the law of
 another state, “escheat” includes the transfer to the state of the right to the custody
 of such property.

* * *

(e) “Controller” means the State Controller.

* * *

[Footnote continues to next page...]

11. The unconstitutional conduct conflicts with the “dual objectives” of the Unclaimed Property Law to be administered by Defendant which are “...to protect unknown owners by locating them and restoring their property to them, and to give the state rather than the holders of unclaimed property the benefit of the use of it, most of which experience shows will never be claimed.” (*Azure v I-Flow* (2009) 46 Cal. 4th 1323, 1328 (“*Azure*”) (quoting *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal. 2d 462, 463).)

12. The UPL was intended to protect and to restore private property rights and was not intended to seize private property to then be sold and destroyed in order to create a revenue stream for the State of California. Yet this private property seizure program operated by the Defendant has now become the 5th largest source of revenue for the bankrupt state.⁶ The Defendant has been told by multiple courts that the operation of the UPL in this fashion is unconstitutional. The prior Controller appeared on national television and multiple media to explicitly state that operation of the UPL program in the manner described in this Complaint is illegal, e.g. “what we did was wrong.”⁷ Thus, the irreparable harm is suffered by the very property

(g) “Domicile,” in the case of a corporation, refers to the place where the corporation is incorporated.”

⁶ Taylor, Mac, “Unclaimed Property: Rethinking the State’s Lost & Found Program, Legislative Analyst’s Office (LAO)” (February 10, 2015).

⁷ ABC News “Good Morning America Show” entitled, *Not So Safe Deposit Boxes States Seize Citizens’ Property to Balance Their Budget*.

[Footnote continues to next page... .]

owners, like Jan Peters, who the Controller is charged to protect under the primary purpose of the statutory scheme and the state and federal Constitutions.

13. Moreover, California uses a short *three*-year “dormancy” period to determine whether a bank or stock account may be deemed dormant and hence “abandoned.” (See Statutory Notes, 2007 Main Volume, Cal. Code Civ. Proc. § 1513; *see also* Stats. 1976, c. 648, § 1 & c. 1214 § 1; Stats. 1988, c. 286 § 2; Stats. 1990, c. 450 (S.B. 57), § 4.) Thus, if an account is inactive for three years – for example, if a customer uses a savings or stock account as a “rainy day” fund or retirement account, just as Mr. Peters did here, and makes no deposits or withdrawals for three years – then the account can be listed as “abandoned” and seized and sold as revenue by the Controller and her privately commissioned contract auditors. When the UPL was enacted in 1959, the dormancy period was fifteen years. In 1976, it was reduced to seven (7) years; in 1988 to five (5) years, and in 1990 to three (3) years.⁸

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Wherein the Controller states, “What we did was dead wrong.”:

<http://www.youtube.com/watch?v=ZdHLIq0qHhU>

The Orange County Register: Open Letter from the Controller to the Public: “State Controller on Asset Seizures” (October 21, 2007) found at <https://www.ocregister.com/2007/10/21/editorial-seized-assets-earn-interest-state-told/>

⁸ A later amendment extended the dormancy period back to five years only for “any other written instrument on which a banking or financial organization is directly liable,” such as a certified check. Stats. 1990, c. 1069 (S.B. 1186), § 1.

1 14. After property is transferred, the Controller continues to deny owners
2 any individualized UPL statutory or constitutional notice, even though they have
3 been deprived of their property. Instead, the Controller operates a “searchable”
4 Internet website that property owners may visit if they are even aware of it. The
5 website is housed within the Controller’s main website and conveys no
6 individualized notice whatsoever to property owners. Further, the “searchable”
7 website is broken and unsearchable and only contains information on the remains of
8 private property *after* it is seized and sold without statutory or constitutional notice.⁹

12 15. Under the Controller’s theory, claimants like Mr. Peters in Germany
13 “should know,” as the Controller has explained to the public, to check California’s
14 broken website and then they may submit “claim forms” seeking the return of certain
15 types of sold property online or otherwise by mail.

18 16. However, it is difficult or impossible for owners to reclaim their
19 property because (a) the Controller’s public website is broken, unsearchable, and
20 hides the identifying information from the owner, often lumping property together
21 without any identifying names - this is especially true if the property is listed with
22 last name first or if the name is misspelled or abbreviated or if a nickname is used
23 (such as “Bill” for “William” or “Dave” for “David”), or if the property is listed by
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28 ⁹ Controller’s Website may be found at: <http://www.sco.ca.gov/upd.html> and
<http://scoweb.sco.ca.gov/UCP/>

1 the name of the institution holding it, rather than the individual owner; (b) there is
 2 no legal claim process because the Controller failed to promulgate legal regulations
 3 as required by law and as touted on the State of California's website;¹⁰ and (c) the
 4 Defendant fails to verify correct owner information with the other readily available
 5 California State databases (such as the Department of Motor Vehicles or voter
 6 registration lists) and could never do so for a citizen of Germany who resides outside
 7 of the borders of California and those of the United States.

11 17. Further, the Controller may reject claims if, for example, she arbitrarily
 12 deems documentation inadequate based on the unpublished, verbal claim process.

14 18. Moreover, with no notice of any kind (whether direct mail or
 15 publication as required by *Mullane, Jones, and Taylor I – III* (see, footnote. 1, at pg.
 16 5, *supra*), many individuals are simply unaware that their property has been
 17 transferred to the Controller or are unaware of the procedure for seeking its return.

19 19. The Plaintiff, for example, lives in Germany, and received no notice of
 20 any kind from the Controller and has no nexus with the forum state, so his property
 21 should never have been seized in the first place. The Controller provides no
 22 publication notice in Germany as required by (see Cal. Code Civ. Proc. § 1531(a)-
 23 (c)), nor does the Controller search the German tax registry for the best possible
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25 ¹⁰ See State of California's home webpage regarding the promulgation of published
 26 regulations publication by the Office of Administrative Law: <https://oal.ca.gov/>
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1 address (*see* Cal. Code Civ. Proc. § 1531(d)), to the extent Defendant ever had
 2 jurisdiction in the first place.
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4 20. Plaintiff would have no reason to suspect that a bankrupt state in a
 5 foreign country would or could seize his stock to be sold as part of a foreign
 6 government-run revenue scheme. Accordingly, property owners are highly unlikely
 7 to avail themselves of this aberrant “Unclaimed Property Law” procedure and, in
 8 fact, only a very small portion of seized property is ever returned. Additionally,
 9 owners of unclaimed property are do not receive interest of the sales proceeds of
 10 their private property, which is seized for use by the State of California.
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12 21. In sum, Plaintiff is entitled to recover his actual private property (as
 13 opposed to damages) with interest and other substantive due process rights under the
 14 5th and 14th Amendments to the United States Constitution. The law requires just
 15 compensation and interest at California’s *alternative borrowing rate*, which is the
 16 amount of interest the State avoids when it uses the illegally seized property instead
 17 of funds borrowed on the open market.¹¹ The California Supreme Court further held
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 24 ¹¹ *See Webb’s Fabulous Pharm’s. v. Beckwith*, 449 U.S. 155, 162 (1980); *United*
 25 *States v. \$277,000 of United States Currency*, 69 F.3d 1491, 1495-96, (9th Cir. 1995);
 26 *United States v. \$133,735.30 Seized from U.S. Bancorp Brokerage Account No.*
 27 *32130630*, 139 F. 3d 729 (1998) (relying on and affirming \$277,000, *supra*); *United*
 28 *States v. \$515,060.42 in United States Currency*, 152 F.3d 491, 504-05 (6th Cir.
 1998) (same); *Brooks v. United States*, 980 F. Supp. 321, 322 (E.D. Mo. 1997)
 (finding government liable for interest actually accrued, or if seized funds were

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1 in *Holt v. Kelly* (1978) 20 Cal. 3d 560, 562 and in *Minsky v. City of Los Angeles*
 2 (1974) 11 Cal. 3d 113, 121, that: “A claim for the specific recovery of property has
 3 never been considered a claim for money or damages.”
 4

5 22. In 2016, two Justices of the U.S. Supreme Court – Justice Alito, joined
 6 by Justice Thomas – expressed constitutional concern about California’s abandoned
 7 property laws to this Defendant, herself, in a separate opinion concurring in the
 8 denial of certiorari in a case presenting the question whether “California law
 9 provides property owners with constitutionally sufficient notice before escheating
 10 their financial assets.” (*Taylor v. Yee*, 136 S. Ct. 929, 929 (2016).) The Justices
 11 explained that “[t]he Due Process Clause requires States to give adequate notice
 12 before seizing private property. When a State is required to give notice, it must do
 13 so through processes ‘reasonably calculated’ to reach the interested party—here, the
 14 property owner.” (*Id.*)
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19 23. Justices Alito and Thomas explained that because the seizure of private
 20 property is no small thing, notification procedures may not be empty rituals:
 21 “[P]rocess which is a mere gesture is not due process.’ Whether the means and
 22 methods employed by a State to notify owners of a pending escheat meet the
 23 constitutional floor is an important question.” (*Id.* (citations omitted).) The Justices
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 28 placed in Treasury account, the constructively earned interest at the government’s
 alternative borrowing rate from the time seized until its return); *contra Suever v.*
Westly, 579 F.3d 1047, 1057 (9th Cir. 2009).

1 noted that, “[i]n recent years, States have shortened the periods during which
2 property must lie dormant before being labeled abandoned and subject to seizure.”
3
4 (*Id.* at 930.) They cited New York, in particular, as an example, and then observed
5 that it recently shortened its dormancy period from as long as 15 years to merely
6 three years. (*Id.*) “This trend—combining shortened escheat periods with minimal
7 notification procedures—raises important due process concerns. As advances in
8 technology make it easier and easier to identify and locate property owners, many
9 States appear to be doing less and less to meet their constitutional obligation to
10 provide adequate notice before escheating private property. Cash-strapped States
11 undoubtedly have a real interest in taking advantage of truly abandoned property to
12 shore up state budgets. But they also have an obligation to return property when its
13 owner can be located. To do that, States must employ notification procedures
14 designed to provide the pre-escheat notice the Constitution requires.” (*Id.*) The
15 Justices concluded that “the constitutionality of current state escheat laws is a
16 question that may merit review in a future case.” (*Id.*) The Defendant’s conduct, as
17 alleged in this case, clearly merits such review.

24. California is generally considered to have one of the most aggressive
25 abandoned property statutes in the nation. The Council on State Taxation (“COST”)
26 graded all 50 states based on the aggressiveness of their abandoned property laws.
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1 California, along with Maine and New Jersey, received the COST's lowest grade: a
 2 "D."¹²
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4 25. The Plaintiff in this case received no notice of any kind whatsoever
 5 before his property (1,029 Amazon shares of stock) were seized by the state officials
 6 and commissioned privately compensated auditors and transferred to the Controller.
 7 Plaintiff subsequently was unsuccessful in seeking return of his property (his
 8 Amazon stock) pursuant to the post-deprivation procedures.
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11 26. The loss of his property in violation of his constitutional rights has
 12 caused irreparable harm to Plaintiff. Specifically, Plaintiff alleges that the
 13 Defendant violates the Constitution and the UPL by:
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- 15 (a) Taking custody of any property (i) over which, she does not have
 16 jurisdiction or (ii) that is delivered without full satisfaction of all
 17 requirements for escheat pursuant to the UPL. (*See* Cal. Code Civ.
 18 Proc. §§ 1300 (definitions); 1510 through 1521 (specific requirements
 19 for escheat of property); 1513.5 (actual notice required by Holder);
 20 1520 (Holder's notice obligations); 1530 (affidavit required of
 21 Holder); 1531 (notice required by Controller).) Plaintiff seeks an
 22 injunction prohibiting the Controller from violating and requiring the
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27 ¹²<https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/cost-scorecard--the-best-and-worst-of-state-unclaimed-property-laws-october-2013.pdf>.
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1 Controller to enforce, in full, each and every requirement of the
 2 Unclaimed Property Law. (*See Taylor v. Betty T. Yee*, 136 S. Ct. 929,
 3 *supra* (United States Supreme Court Associate Justices Samuel A.
 4 Alito, Jr. and Clarence Thomas explained to this Defendant that: “The
 5 Due Process Clause requires States to give adequate notice before
 6 seizing private property); *Azure v I-Flow* (2009) 46 Cal. 4th 1323,
 7 1336 (The California Supreme Court explained to the Controller that:
 8 “Requiring compliance with the UPL—i.e., ensuring that the owners
 9 are in fact unknown and the property is in fact unclaimed—further
 10 the purpose of protecting unknown owners. Moreover, the state has no
 11 legitimate interest in receiving and using property that is not
 12 unclaimed”); *see also Bank of America v. Cory*, (1985) 164 Cal. App.
 13 3d 66, 74 (“When considered in total context, the statutory scheme of
 14 the UPL compels the Controller to affirmatively take all steps
 15 necessary to carry out the purposes of the UPL.”).)

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 22 (b) The 43 million property owners (Plaintiff owns other stock that is
 23 threatened by this bizarre property seizure process) cannot claim their
 24 private property from the custody of the Controller because the
 25 Controller does not maintain and list the property owners’ names on
 26 her “searchable website,” i.e., the broken website found at:
 27
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https://www.seo.ca.gov/upd_lawregs.html.

Instead, the Controller maintains publicly that she has no obligation whatsoever to fix the broken website and to properly maintain ownership information, such as properly spelled names and correct addresses of the 43 million citizens, who have no way to reclaim their property from the Controller's custody.¹³

(c) There is no legal claim process in place for the 43 million citizens to reclaim their private property and no legal process in place to guide the audits of companies for unclaimed property. Instead, the process is verbal or contained in 300+ pages of forms, notices, bulletins, memos, and "guidelines" that are not published but only maintained solely on the Controller's government website at:

https://www.sco.ca.gov/upd_lawregs.html.

(*See Tidewater Marine Western v. Bradshaw* (1996) 14 Cal 4th 557, 568-577, wherein the California Supreme Court held that an Agency's actions are "void" for failure to adopt written regulations pursuant to

¹³ See ABC7 News, "Do you have money hiding in plain sight? How to find out" (April 23, 2019) found: <https://abc7news.com/education/money-hiding-in-plain-sight/5267081/?fbclid=IwAR2juAjXvWQyyVSYIhsSkMnExTL71B0KLArOO6CFrfiyyL8R6kqHfbA96hA>.

1 public rulemaking under the Administrative Procedures Act (“APA”),
 2 Government Code sections 11340, *et seq.* (Deerings 2021).)

- 3
- 4 (d) The Controller does not provide constitutional notice and due process
 5 to property owners prior to seizing the private property which is sold,
 6 destroyed, and monetized for use by the California state government.
 7 The sad reality is the private Unclaimed Property Fund contains
 8 roughly \$50,000 because all \$10.2 billion has been loaned, interest
 9 free, to the California General Fund. The Unclaimed Property Fund
 10 consists of notational accounts that are maintained on a broken
 11 website. By the time this property is listed on the Controller’s website
 12 it is, in virtually every instance, already gone, i.e. the property owner’s
 13 stock is sold and destroyed. (*See Taylor v. Betty T. Yee*, 136 S. Ct.
 14 929 (2016), *Jones v. Flowers*, 547 U.S. 220 (2006) (citing *Mullane v.*
 15 *Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), *Taylor v. Westly*,
 16 402 F.3d 924 (9th Cir. 2005), reh’g and reh’g en banc den. (May 13,
 17 2005) (Describing California’s “new approach” to escheat) (The Ninth
 18 Circuit denied the Controller's petition for rehearing and rehearing *en*
 19 *banc* with the added comment that the panel circulated the petition to
 20 all the 58-judges of the Ninth Circuit and "not a single judge" wished
 21 to rehear the case); *Taylor v. Westly*, 488 F.3d 1197 (9th Cir. 2007)

(Directing the District Court to enter a preliminary injunction enjoining Defendants from accepting property under color of the UPL until Controller satisfies Due Process Clause.); *Taylor v. Westly*, 525 F.3d 1288 (9th Cir. May 12, 2008) (This decision awarded Mr. Palmer’s law firm all of its interim fees for the 7 years’ of work on the *Taylor* case); *Suever v. Connell*, 439 F. 3d 1142 (9th Cir. 2006) (Same).)

- (e) The Controller fails to pay interest for use of private funds by the California General Fund that are taken for use by the State when (and if) the funds are ever returned to the owner. (*See Webbs Fabulous Pharms. v. Beckwith*, 449 U.S. 155, 162 (1980).)

27. Accordingly, Plaintiff seeks declaratory and injunctive relief against Defendant Betty T. Yee, Controller of the State of California and in her capacity as Custodian of the private Unclaimed Property Fund, to remedy the constitutional defects in the UPL.

B. Statutory Background

28. California’s UPL departs from the historic function of abandoned property laws. Traditionally, abandoned property or “escheat” statutory schemes applied to real property and tangible personal property belonging to persons who died intestate or disappeared, where there was no descendent, relative, or other

1 valid claimant to the estate. In these situations, the property truly was abandoned
2 and ownerless (*bona vacantia*).
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4 29. The UPL is very different. Instead of being limited to property owned
5 by persons who have died intestate or disappeared, the statute applies to *any*
6 property meeting the technical definition of “abandonment.” Rather than
7 protecting the rights of the “true owners,” the statute reflects a new form of
8 escheatment that views unclaimed property as a revenue generator for the state
9 government.
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12 30. It was not until the mid-Twentieth Century that states such as
13 California began to expand unclaimed property laws to include certain types of
14 intangible property including, in particular, unclaimed bank deposits. State
15 governments soon realized that unclaimed intangible property, after it was remitted
16 to the states, was often never claimed by the owner and, thus, could represent a
17 significant source of revenue.
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21 31. Starting in the late 1990’s and early 2000’s, the states began to
22 dramatically increase their enforcement efforts. This surge in audit activity was in
23 large part due to the proliferation of the use of private contract audit firms that are
24 compensated by the states on a contingent-fee basis -- typically, 10 to 15 percent
25 of the amount of any unclaimed property that is identified in the audit. Such a fee
26 structure provides a profit incentive to such firms to take aggressive positions in
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1 these audits. Further, these contingent-fee audit firms are often staffed by former
 2 accountants and consultants with far greater expertise in unclaimed property
 3 matters than their client states, which led many states to defer almost entirely to the
 4 positions taken by these firms in audits.
 5

6
 7 32. Unclaimed property audits are replete with examples of the contract
 8 audit firms essentially dictating policy to states, which lack the knowledge or
 9 expertise to know when these audit firms are overreaching. The use of contingent
 10 fee audits (which of course creates financial incentives for larger assessments) is
 11 also inconsistent with the primary purpose of unclaimed property laws, which is to
 12 return property that is indisputably owed to another person.
 13

14
 15 33. In short, California's UPL, along with unclaimed property laws in
 16 other states, has been trending in the wrong direction for over thirty years, because
 17 such laws have been greatly expanded in unconstitutional ways for the purpose of
 18 generating revenue for states, at the expense of both owners and putative holders
 19 of unclaimed property.
 20

21
 22 34. The UPL does not use the traditional understanding of "abandonment"
 23 – *i.e.*, the knowing and voluntary relinquishment or renunciation of property rights.
 24 Instead, property is deemed to be "abandoned" under the UPL according to
 25 dormancy thresholds specified in the statute. As a general rule, property is deemed
 26 "abandoned" if it is dormant for three years with no activity by the owner. (*See*
 27
 28

1 Statutory Notes, 2007 Main Volume, Cal. Code Civ. Proc. § 1513; see also Stats.
 2 1976, c. 648, § 1 & c. 1214 § 1; Stats. 1988, c. 286 § 2; Stats. 1990, c. 450 (S.B.
 3 57), § 4.) When the UPL was enacted in 1959, the dormancy period was fifteen
 4 years. In 1976, it was reduced to seven (7) years; in 1988 to five (5) years, and in
 5 1990 to three (3) years.

8 35. The UPL uses a three-year rule to determine whether a bank account
 9 is dormant, even though a typical person does not “forget” about his or her bank
 10 account after a mere three years. Rather, such accounts are often left untouched
 11 for extended periods of time (*e.g.*, “rainy-day” accounts). The shortening of the
 12 dormancy period in 1990 was driven more by state revenue concerns than by any
 13 correlation with the actual time that owners are likely to have forgotten about their
 14 property.

18 36. In another escheat case, Judge Richard Posner of the Seventh Circuit
 19 Court of Appeals described a three-year dormancy period for determining
 20 abandonment as “a period so short as to present a serious question whether it is
 21 consistent with the requirement in the Fourteenth Amendment that property not be
 22 taken without due process of law, implying adequate notice and opportunity to
 23 contest.” (*Cerajeski v. Zoeller*, 735 F.3d 577, 582 (7th Cir. 2013).)

26 ///

28 ///

1 37. In *Taylor v. Westly*, 488 F.3d 1197 (9th Cir. 2007), the Ninth Circuit
 2 Court of Appeals held that an injunction should be issued against California's
 3 Unclaimed Property law for similar violations of the U.S. Constitution.
 4

5 38. As part of the State's relentless campaign to fill its coffers with the
 6 sale proceeds of "abandoned" property, the UPL contains strong penalties coercing
 7 holders of property, including banks and other entities, to report as much
 8 "abandoned" property as possible to the Controller. Such entities are required,
 9 subject to severe penalties, to submit "holder reports" annually to the Controller
 10 listing all "abandoned" property they hold. Such reports must include details on
 11 the property as well as a remittance to the Controller of the escheated property.
 12

13 39. "Abandoned" property is transferred to the Controller, which acts as
 14 custodian of the private property. Holders of property (such as banks and utilities)
 15 may transfer cash via electronic funds transfers for amounts less than \$20,000.
 16 (Cal. Code Civ. Proc. § 1532; Cal. Code. Reg. § 1155.150)
 17

18 40. Property that is not claimed by its owners is escheated to the State and
 19 spent by the California State government.
 20

21 41. The State's voracious appetite for unclaimed property is reflected in
 22 its retention, as of fiscal year ("FY") 2018, of \$9.3 billion in unclaimed funds.
 23 (California State Controller's Press Release dated March 13, 2019 found at:
 24 https://www.sco.ca.gov/eo_pressrel_19941.html.)
 25
 26
 27
 28

1 42. Banking organizations holding purportedly “abandoned” property
2
3 which is less than \$50 in value are not required to provide any notice at all to
4 rightful owners before transferring it to the Controller.¹⁴

5 Telephone calls or verbal contact with an owner does not prevent property
6
7 from being deemed abandoned. Nor does internal activity such as service charges,
8 crediting of interest and dividends, automatic dividend reinvestment, and automatic
9 withdrawals. (Code Civ. Proc. § 1513)
10

11 **FIRST CLAIM FOR RELIEF**

12 **(U.S. Const., Fourteenth Amendment, Section 1 - Due Process Clause;** 13 **42 U.S.C. § 1983)**

14 43. The allegations set forth above are incorporated into this claim by
15
16 reference as though set forth in full.

17 44. The Fourteenth Amendment, Section 1, of the United States
18
19 Constitution provides, in part, “nor shall any State deprive any person of life, liberty,
20 or property, without due process of law... .” A claim for violation of this federal
21 right may be brought under 42 U.S.C. § 1983.
22

23 45. The Controller, under the color of law as provided by the UPL, has
24
25 violated (and continues to violate) Plaintiff’s right to due process through her
26

27 ¹⁴ Call Kurtis Investigates: *State Can Keep Your Unclaimed Money Under Bill*
28 *Meant To Close Loophole*. <http://sacramento.cbslocal.com/2013/06/06/call-kurtis-investigates-state-can-keep-your-unclaimed-money-under-bill-meant-to-close-loophole/#.UbJVXKCsoJE.email>.

1 enforcement and administration of the UPL, by depriving him of his property
2 without due process.
3

4 46. Plaintiff has a constitutionally protected property interest in the private
5 property that he owns and that was seized by the State under the processes described
6 herein. Defendant deprived Plaintiff and property owners of their constitutionally
7 protected property interests by seizing their property without providing notice and
8 due process and by arbitrarily taking property from private companies and financial
9 institutions without requesting the rightful owner's name, even when it is readily
10 available, when the property is worth less than \$50.
11

12 47. Unless the Controller is restrained and enjoined from continuing to
13 enforce and administer the UPL in manner that violates Plaintiff's constitutional
14 rights, she will continue to do so far into the foreseeable future.
15

16 48. Plaintiff has no plain, speedy, adequate remedy at law; therefore,
17 injunctive relief from this Court is the only means available to them to protect the
18 rights guaranteed Plaintiff by the Fourteenth Amendment's due process clause.
19
20
21

22 **SECOND CLAIM FOR RELIEF**

23
24 **(U.S. Const., Fifth Amendment - Takings Clause; 42 U.S.C. § 1983)**

25 49. The allegations set forth above are incorporated into this claim by
26 reference as though set forth in full.
27

28 ///

1 50. The Fifth Amendment to the United States Constitution provides, in
2 part, that “[n]o person shall . . . be deprived of life, liberty, or property, without due
3 process of law; nor shall private property be taken for public use, without just
4 compensation.” The Just Compensation requirement is a self-executing
5 constitutional command. It is also enforceable via an action pursuant to 42 U.S.C.
6 § 1983.
7

8
9 51. The Controller, under the color of law as provided by the UPL, has
10 violated (and continues to violate) Plaintiff’s right under the Fifth Amendment
11 through her enforcement and administration of the UPL, by taking Plaintiff’s
12 property without just compensation.
13

14
15 52. The Controller’s above-described unlawful takings of private property
16 substantially impaired Plaintiff’s access, use, and enjoyment of said property for no
17 valid public use or public purpose.
18

19 53. Unless the Controller is restrained and enjoined from continuing to
20 enforce and administer the UPL in manner that violates Plaintiff’s constitutional
21 rights, she will continue to do so far into the foreseeable future.
22

23 54. Plaintiff has no plain, speedy, adequate remedy at law; therefore,
24 injunctive relief from this Court is the only means available to them to protect the
25 rights guaranteed Plaintiff by the Fifth Amendment’s takings clause.
26

27
28 ///

PRAYER FOR RELIEF

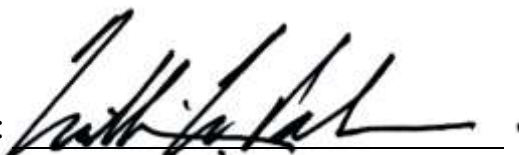
WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. Declaratory relief declaring that Defendant's enforcement and administration of the UPL against Plaintiff violates the Fifth and Fourteenth Amendments of the United States Constitution.
2. Injunctive relief enjoining Defendant from enforcing or administering the UPL against Plaintiff and the public.
3. Injunctive relief requiring Defendant to return Plaintiff's property.
4. An award of attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
5. Such other and further relief as this Court deems just and proper.

DATED: June 17, 2021

Respectfully submitted,

PALMER LAW GROUP, a PLC

By: 
William W. Palmer

Attorneys for plaintiff Jan Peters

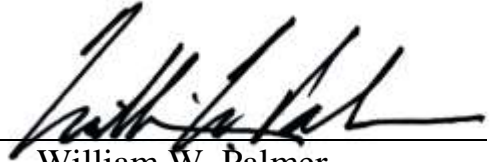
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: June 17, 2021

PALMER LAW GROUP, a PLC

By:


William W. Palmer

Attorneys for plaintiff Jan Peters